

Before the
COPYRIGHT ROYALTY JUDGES
The Library of Congress

In the Matter of)	
)	
Distribution of the 2000-2003)	Docket No. 2008-2
Cable Royalty Funds)	CRB CD 2000-2003 (Phase II)
)	

**SETTLING DEVOTIONAL CLAIMANTS' RESPONSE TO INDEPENDENT
PRODUCERS GROUP'S ASSERTION OF CONFIDENTIALITY OF DIVISION OF
ROYALTIES**

There is no basis for Independent Producers Group's request to redact distribution shares in the public version of the Judges' Order Directing Parties to Review Calculations of Apportionment of Accrued Interest and the Appendix. The shares are already public. *See* SDC's Motion for Final Distribution Under 17 U.S.C. § 801(b)(3)(A) (July 25, 2019) at 1 (publicly disclosing percentage shares); IPG's Opposition to SDC's Motion for Final Distribution Under 17 U.S.C. § 801(b)(3)(A) and Motion for Sanctions (Aug. 5, 2019) at 4 n. 1 (same); Order Granting SDC Motion for Final Distribution (Jan. 9, 2020) at 3, 4, and 5 (same). The Judges have already found that the percentage shares were not designated as "restricted" under the Protective Order and that they were not subject to any other order of the Judges. Order Granting SDC Motion for Final Distribution (Jan. 9, 2020) at 5 ("The communications between IPG and the SDC [containing the agreed shares] were not designated 'restricted' under the Protective Order in force in this proceeding, nor were they subject to any other order of the Judges."). IPG has not sought reconsideration of this ruling.

For the reasons already argued extensively in the SDC's Reply in Support of Their Motion for Final Distribution Under 17 U.S.C. § 801(b)(3)(A) and Opposition to IPG's Motion

for Sanctions (Aug. 8, 2019), the agreed percentage shares are not covered by any confidentiality agreement, because confidentiality was not a term of the SDC's offer or of IPG's acceptance and because confidentiality would be inconsistent with the terms that the parties discussed leading up to the offer and acceptance.

But even if IPG were correct that the parties' settlement agreement included an implied term of confidentiality, an agreement between the parties is not a sufficient reason to seal judicial or administrative records. *See Financial Stability Oversight Council v. Better Markets, Inc.*, 865 F.3d 661, 667 (D.C. Cir. 2017) (rejecting parties' joint request to keep agency records under seal, and remanding to district court for application of factors for sealing of records under *United States v. Hubbard*, 650 F.2d 293 (D.C. Cir. 1980)); *see also Motorola Solutions, Inc. v. Hytera Communications Corp.*, 367 F. Supp. 3d 813, 816 (N.D. Ill. 2019) ("Even the agreement of the parties will not justify the entry of a protective order that ought not otherwise be entered."). Rather, the party seeking to keep records under seal must "come forward with specific reasons why the record, or any part thereof, should remain under seal." *Johnson v. Greater Southeast Community Hosp. Corp.*, 951 F.2d 1268, 1278 (D.C. Cir. 1991). IPG has come forward with no prejudice whatsoever from making its percentage shares public.

Even if IPG could identify specific harm, it failed to seek a protective order before the shares were made public, even after the SDC gave IPG notice of their intent to move to enforce the parties' settlement agreement. *See SDC's Reply in Support of Their Motion for Final Distribution Under 17 U.S.C. § 801(b)(3)(A) and Opposition to IPG's Motion for Sanctions* (Aug. 8, 2019) at 4 ("The SDC gave IPG two days' advance notice that they intended to file a motion attaching the settlement negotiations, and repeatedly invited a response. Exhibit 3, emails from M. MacLean to B. Boydston, July 23 and 24, 2019. IPG could have moved for a

protective order, or it could have asked the SDC's counsel for more time to prepare such a motion.”). It is far too late for IPG to seek redaction of public information now that any cats are long out of the bag.

May 8, 2020

Respectfully submitted,

SETTLING DEVOTIONAL CLAIMANTS

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Certificate of Service

I certify that on May 8, 2020, I caused a copy of the foregoing to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

/s/ Matthew J. MacLean
Matthew J. MacLean

Proof of Delivery

I hereby certify that on Friday, May 08, 2020, I provided a true and correct copy of the Response to Independent Producers Group's Assertion of Confidentiality of Division of Royalties to the following:

Independent Producers Group (IPG), represented by Brian D Boydston, served via ESERVICE at brianb@ix.netcom.com

Signed: /s/ Matthew J MacLean